

**ASSEMBLY BILL**

**No. 2046**

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**Introduced by Assembly Member Gomez**

February 20, 2014

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An act to amend Section 6588 of the Government Code, relating to joint exercise of powers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2046, as introduced, Gomez. Joint exercise of powers: financing.

The Joint Exercise of Powers Act authorizes the legislative or other governing bodies of 2 or more public agencies to jointly exercise by agreement any power common to the contracting parties, as specified, and authorizes a joint powers authority to exercise various powers, including, among others, the power to issue bonds, including bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program, as specified.

This bill would authorize a joint powers authority to execute and deliver, or cause to be executed and delivered, certificates of participation in a lease or installment sale agreement for the financing or refinancing of a project that is situated in another state, including working capital related to that project, if the project and its financing meets certain conditions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6588 of the Government Code is amended to read:

6588. In addition to other powers specified in an agreement pursuant to Article 1 (commencing with Section 6500) and Article 2 (commencing with Section 6540), the authority may do any or all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Sue and be sued in its own name.

(c) (1) Issue bonds, including, at the option of the authority, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program.~~In~~

(2) (A) *In addition to paragraph (1), for any purpose for which an authority may execute and deliver or cause to be executed and delivered certificates of participation in a lease or installment sale agreement with any public or private entity, the authority, at its option, may issue or cause to be issued bonds, rather than certificates of participation, and enter into a loan agreement with the public or private entity.*

(B) *Notwithstanding Sections 6586 and 6586.5 or any other law, and in addition to any other purpose for which the authority may issue bonds, an authority may execute and deliver, or cause to be executed and delivered, certificates of participation in a lease or installment sale agreement pursuant to this paragraph for the financing or refinancing of a project that is situated in another state, including working capital related to that project, if all of the following apply:*

(i) *The project is owned, developed, or operated by a private entity.*

(ii) *The execution and delivery of the certificates of participation by the authority and the financing of the project is approved by resolution, order, or other official action of the city, county, or other public body with land use planning authority over the project, or of the state in which the project is situated. This subparagraph does not apply to the issuance of refunding bonds if a prior financing or refinancing of the project was approved by the city, county, public body, or state.*

1     (iii) *The authority finds, based on the facts and circumstances*  
2 *attendant to the project or the financing or refinancing of the*  
3 *project, that the execution and delivery of the certificates of*  
4 *participation or the financing or refinancing of the project will*  
5 *result in a substantial public benefit to, and are for a public*  
6 *purpose of, the citizens of this state.*

7     (d) Engage the services of private consultants to render  
8 professional and technical assistance and advice in carrying out  
9 the purposes of this article.

10    (e) As provided by applicable law, employ and compensate  
11 bond counsel, financial consultants, and other advisers determined  
12 necessary by the authority in connection with the issuance and sale  
13 of any bonds.

14    (f) Contract for engineering, architectural, accounting, or other  
15 services determined necessary by the authority for the successful  
16 development of a public capital improvement.

17    (g) Pay the reasonable costs of consulting engineers, architects,  
18 accountants, and construction, land-use, recreation, and  
19 environmental experts employed by any sponsor or participant if  
20 the authority determines those services are necessary for the  
21 successful development of public capital improvements.

22    (h) Take title to, sell by installment sale or otherwise, or lease  
23 lands, structures, real or personal property, rights, rights-of-way,  
24 franchises, easements, and other interests in lands that are located  
25 within the state that the authority determines are necessary or  
26 convenient for the financing of public capital improvements, or  
27 any portion thereof.

28    (i) Receive and accept from any source, loans, contributions,  
29 or grants, in either money, property, labor, or other things of value,  
30 for, or in aid of, the construction financing, or refinancing of public  
31 capital improvement, or any portion thereof or for the financing  
32 of working capital or insurance programs, or for the payment of  
33 the principal of and interest on bonds if the proceeds of those bonds  
34 are used for one or more of the purposes specified in this section.

35    (j) Make secured or unsecured loans to any local agency in  
36 connection with the financing of capital improvement projects,  
37 working capital or insurance programs in accordance with an  
38 agreement between the authority and the local agency. However,  
39 no loan shall exceed the total cost of the public capital

1 improvements, working capital or insurance needs of the local  
2 agency as determined by the local agency and by the authority.

3 (k) Make secured or unsecured loans to any local agency in  
4 accordance with an agreement between the authority and the local  
5 agency to refinance indebtedness incurred by the local agency in  
6 connection with public capital improvements undertaken and  
7 completed.

8 (l) Mortgage all or any portion of its interest in public capital  
9 improvements and the property on which any project is located,  
10 whether owned or thereafter acquired, including the granting of a  
11 security interest in any property, tangible or intangible.

12 (m) Assign or pledge all or any portion of its interests in  
13 mortgages, deeds of trust, indentures of mortgage or trust, or  
14 similar instruments, notes, and security interests in property,  
15 tangible or intangible, of a local agency to which the authority has  
16 made loans, and the revenues therefrom, including payment or  
17 income from any interest owned or held by the authority, for the  
18 benefit of the holders of bonds issued to finance public capital  
19 improvements. The pledge of moneys, revenues, accounts, contract  
20 rights, or rights to payment of any kind made by or to the authority  
21 pursuant to the authority granted in this part shall be valid and  
22 binding from the time the pledge is made for the benefit of the  
23 pledgees and successors thereto, against all parties irrespective of  
24 whether the parties have notice of the claim.

25 (n) Lease the public capital improvements being financed to a  
26 local agency, upon terms and conditions that the authority deems  
27 proper; charge and collect rents therefor; terminate any lease upon  
28 the failure of the lessee to comply with any of the obligations of  
29 the lease; include in any lease provisions that the lessee shall have  
30 options to renew the lease for a period or periods, and at rents as  
31 determined by the authority; purchase or sell by an installment  
32 agreement or otherwise any or all of the public capital  
33 improvements; or, upon payment of all the indebtedness incurred  
34 by the authority for the financing or refinancing of the public  
35 capital improvements, the authority may convey any or all of the  
36 project to the lessee or lessees.

37 (o) Charge and apportion to local agencies that benefit from its  
38 services the administrative costs and expenses incurred in the  
39 exercise of the powers authorized by this article. These fees shall  
40 be set at a rate sufficient to recover, but not exceed, the authority's

1 costs of issuance and administration. The fee charged to each local  
2 obligation acquired by the pool shall not exceed that obligation's  
3 proportionate share of those costs. The level of these fees shall be  
4 disclosed to the California Debt and Investment Advisory  
5 Commission pursuant to Section 6599.1.

6 (p) Issue, obtain, or aid in obtaining, from any department or  
7 agency of the United States or of the state, or any private company,  
8 any insurance or guarantee to, or for, the payment or repayment  
9 of interest or principal, or both, or any part thereof, on any loan,  
10 lease, or obligation or any instrument evidencing or securing the  
11 same, made or entered into pursuant to this article.

12 (q) Notwithstanding any other provision of this article, enter  
13 into any agreement, contract, or any other instrument with respect  
14 to any insurance or guarantee; accept payment in the manner and  
15 form as provided therein in the event of default by a local agency;  
16 and assign any insurance or guarantee that acts as security for the  
17 authority's bonds.

18 (r) Enter into any agreement or contract, execute any instrument,  
19 and perform any act or thing necessary, convenient, or desirable  
20 to carry out any power authorized by this article.

21 (s) Invest any moneys held in reserve or sinking funds, or any  
22 moneys not required for immediate use or disbursement, in  
23 obligations that are authorized by law for the investment of trust  
24 funds.

25 (t) At the request of affected local agencies, combine and pledge  
26 revenues to public capital improvements for repayment of one or  
27 more series of bonds issued pursuant to this article.

28 (u) Delegate to any of its individual parties or other responsible  
29 individuals the power to act on its behalf subject to its general  
30 direction, guidelines, and oversight.

31 (v) Purchase, with the proceeds of its bonds or its revenue, bonds  
32 issued by any local agency at public or negotiated sale. Bonds  
33 purchased pursuant to this subdivision may be held by the authority  
34 or sold to public or private purchasers at public or negotiated sale,  
35 in whole or in part, separately or together with other bonds issued  
36 by the authority.

37 (w) Purchase, with the proceeds of its bonds or its revenue, VLF  
38 receivables sold to the authority pursuant to Section 6588.5. VLF  
39 receivables so purchased may be pledged to the payment of bonds  
40 issued by the authority or may be resold to public or private

1 purchasers at public or negotiated sale, in whole or in part,  
2 separately or together with other VLF receivables purchased by  
3 the authority.

4 (x) (1) Purchase, with the proceeds of its bonds or its revenue,  
5 Proposition 1A receivables pursuant to Section 6588.6. Proposition  
6 1A receivables so purchased may be pledged to the payment of  
7 bonds issued by the authority or may be resold to public or private  
8 purchasers at public or negotiated sales, in whole or in part,  
9 separately or together with other Proposition 1A receivables  
10 purchased by the authority.

11 (2) (A) All entities subject to a reduction of ad valorem property  
12 tax revenues required under Section 100.06 of the Revenue and  
13 Taxation Code pursuant to the suspension set forth in Section  
14 100.05 of the Revenue and Taxation Code shall be afforded the  
15 opportunity to sell their Proposition 1A receivables to the authority.

16 (B) If these entities offer Proposition 1A receivables to the  
17 authority for purchase and duly authorize the sale of the Proposition  
18 1A receivable pursuant to documentation approved by the  
19 authority, the authority shall purchase all Proposition 1A  
20 receivables so offered to the extent it can sell bonds therefor. If  
21 the authority does not purchase all Proposition 1A receivables  
22 offered, it shall purchase a pro rata share of each entity's offered  
23 Proposition 1A receivables.

24 (C) The authority may establish a deadline, no earlier than  
25 November 3, 2009, by which these entities shall offer their  
26 Proposition 1A receivables for sale to the authority and complete  
27 the application required by the authority.

28 (3) For purposes of meeting costs incurred in performing its  
29 duties relative to the purchase and sale of Proposition 1A  
30 receivables, the authority shall be authorized to charge a fee to  
31 each entity from which it purchases a Proposition 1A receivable.  
32 The fee shall be computed based on the percentage value of the  
33 Proposition 1A receivable purchased from each entity, in relation  
34 to the value of all Proposition 1A receivables purchased by the  
35 authority. The amount of the fee shall be paid from the proceeds  
36 of the bonds and shall be included in the principal amount of the  
37 bonds.

38 (4) Terms and conditions of any and all fees and expenses  
39 charged by the authority, or those it contracts with, and the terms  
40 and conditions of sales of Proposition 1A receivables and bonds

1 issued pursuant to this subdivision, including the terms of optional  
2 early redemption provisions, if any, shall be approved by the  
3 Treasurer and the Director of Finance, who shall not unreasonably  
4 withhold their approval. The aggregate principal amount of all  
5 bonds issued pursuant to this subdivision shall not exceed two  
6 billion two hundred fifty million dollars (\$2,250,000,000), and the  
7 rate of interest paid on those bonds shall not exceed 8 percent per  
8 annum. The authority shall exercise its best efforts to obtain the  
9 lowest cost financing possible. Any and all premium obtained shall  
10 be used for either of the following:

11 (A) Applied to pay the costs of issuance of the bonds.

12 (B) Deposited in a trust account that is pledged to bondholders  
13 and used solely for the payment of interest on, or for repayment  
14 of, the bonds.

15 (5) (A) In connection with any financing backed by Proposition  
16 1A receivables, the Treasurer may retain financial advisors, legal  
17 counsel, and other consultants to assist in performing the duties  
18 required by this chapter and related to that financing.

19 (B) Notwithstanding any other law, none of the following shall  
20 apply to any agreements entered into by the Treasurer pursuant to  
21 subparagraph (A) in connection with any Proposition 1A financing:

22 (i) Section 11040 of the Government Code.

23 (ii) Section 10295 of the Public Contract Code.

24 (iii) Article 3 (commencing with Section 10300) and Article 4  
25 (commencing with Section 10335) of, Chapter 2 of Part 2 of  
26 Division 2 of the Public Contract Code, except for the authority  
27 of the Department of Finance under Section 10336 of the Public  
28 Contract Code to direct a state agency to transmit to it a contract  
29 for review, and except for Section 10348.5 of the Public Contract  
30 Code.

31 (C) Any costs incurred by the Treasurer in connection with any  
32 Proposition 1A financing shall be reimbursed out of the proceeds  
33 of the financing.

34 (y) Set any other terms and conditions on any purchase or sale  
35 pursuant to this section as it deems by resolution to be necessary,  
36 appropriate, and in the public interest, in furtherance of the  
37 purposes of this article.

38 SEC. 2. This act is an urgency statute necessary for the  
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into  
2 immediate effect. The facts constituting the necessity are:  
3 In order to timely provide essential bonding authority for the  
4 funding of multi-state, public-private projects that are necessary  
5 to ensure California's national and international competitiveness  
6 and public benefits in this state, it is necessary that this act take  
7 effect immediately.

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